UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,585	02/06/2004	Dennis B. Jenkins	430.190	6736

7590 03/05/2008

JOEL J. HAYASHIDA
CORPORATE PATENT COUNSEL
THE CLOROX COMPANY
P.O. BOX 24305
OAKLAND, CA 94623-1305

EXAMINER	
MERCIER, MELISSA S	

ART UNIT	PAPER NUMBER
1615	

MAIL DATE	DELIVERY MODE
03/05/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/773,585	JENKINS ET AL.	
	Examiner	Art Unit	
	MELISSA S. MERCIER	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *14 December 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *101,115-118 and 121-126* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *10,115-118 and 121-126* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 14, 2007 has been entered.

Claims 101, 115-119, and 121-126 are pending in this application. Rejections and/or objections not reiterated from previous Office Actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 101, 115-118, 121, 123, and 126-127 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mise et al. (US Patent 4,837,020) in view of House (US Patent 5,188,064).

Mise discloses a deodorant composition comprising (a) D-glucosaccharoascorbic acid and (b) a ferrous compound and/or a cupric compound is disclosed. The composition displays excellent deodorant effects by removing the offensive and foreign

odors rapidly, irrespective of whether they are originating from basic substances such as ammonia or those from acid substances such as hydrogen sulfide (abstract). Animal pens are disclosed as sources of the odor, therefore, it is the examiners position that one of ordinary skill in the art would look to animal litters. It is disclosed that the components (a) and (b) can be present in a solid composition, mixed in powdery state, evenly to the desired composition. The resulting composition may be used as support on a porous material such as activated carbon and activated alumina. Deposition on such a porous material can be accomplished by preparing a solution of the deodorant composition, impregnating the porous material with a solution and drying the same (column 2, lines 39-59). The composition can also be applied to paper, a cellulosic material (column 2, lines 60-62).

Regarding the activated alumina particles being colored, it is the examiners position that activated alumina is colored in its natural state. The claims do not indicate a function of the coloring other than to distinguish the particles from other particles included in the composition; therefore, it is the position of the examiner that it would have been obvious to a person of ordinary skill in the art to add a coloring agent in order to visually distinguish the particles.

Mise does not disclose the use of clay.

House discloses a clumping cat litter comprising smectite clay admixed with a cellulosic material (column 2, lines 52-62). Preferred clays include bentonite clays provided that a sufficient number of their exchangeable cations are sodium cations to effect osmotic swelling (column 4, lines 20-28).

Applicant is reminded that where the general conditions of the claims are met, burden is shitted to applicant to provide a patentable distinction. Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. See In re Aller, 220 F.2d 454 105 USPQ 233,235 (CCPA 1955).

Furthermore the claims differ from the reference by reciting various concentrations of the active ingredient(s). However, the preparation of various sanitizing compositions having various amounts of the active is within the level of skill of one having ordinary skill in the art at the time of the invention. It has also been held that the mere selection of proportions and ranges is not patentable absent a showing of criticality. See In re Russell, 439 F.2d 1228 169 USPQ 426(CCPA 1971).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have used the incorporated the clays of House into the composition taught by Mise in order to eliminate or reduce the odors associated with animal urine and to provide a clumping sorbent having superior sorption capacity and sufficient cohesiveness when wetted with an aqueous liquid, such as urine, to be easily separated from the nonwetted sorbent particles. Additionally, since activated alumina, activate carbon and additional odor absorbing particles, in this case, the use of a clay, are all known in the art to be used in animal litter products, it would have been obvious to a person of ordinary skill in the art to combine the components into a single composition to be used for the same purpose.

Claim 119 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mise et al. (US Patent 4,837,020) in view of House (US Patent 5,188,064) and further in view of Heitfeld et al. (US Patent 4,957,063).

The combined teachings of Mise and House is discussed above and applied in the same manner.

Mise and House do not disclose the use of an antimicrobial agent.

Heitfeld teaches an odor control animal littler comprising an antimicrobial agent (column 2, lines 24-50).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have incorporated the antimicrobial agents taught by Heitfeld into the animal litter compositions taught by Mise and House in order to use a known technique for the same purpose and in a similar product. It is the examiners position that since it is known in the art to use antimicrobial agents in animal litter compositions, it would have been obvious to a person of ordinary skill in the art to have incorporates such a component into another litter composition with the expectation of the providing antibacterial properties.

Response to Arguments

Applicant's arguments have been fully considered but they are not persuasive. Applicants claim the odor-absorbing properties of activated alumina having pores and fissures in animal litter and, more specifically, that the porous and fissurous structure of the activated alumina provides the odor absorption. It is submitted that impregnated with (a) D-glucosaccharoascorbic acid and (b) ferrous and/or cupric

compounds onto activated alumina, precludes the activated alumina from absorbing any additional odors. Thus, the odor controlling activity disclosed and taught in Mise is attributable to the combination of D-glucosaccharoascorbic acid and ferrous and/or cupric compounds, not the activated alumina. This is further evidenced by the fact that activated alumina is but one support material disclosed. Others include paper, cloth, nonwoven fabric, and plastic film. (col.2, lines 50-63). The examiner notes that Applicant has used the terminology comprising in the claims, thereby allowing for the inclusion of any number of additional components. Additionally, it is the position of the examiner that the activated alumina would possess the same functional properties as the instant claims, barring a showing to the contrary. Determining a new property of an old product does not provide patentable distinction over the teachings of the prior art. Finally, it is submitted that Applicant is claiming a composition, and therefore, the intended function of the composition does not hold patentable weight.

Conclusion

No claims are allowable. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA S. MERCIER whose telephone number is (571)272-9039. The examiner can normally be reached on 7:30am-4pm Mon through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melissa S Mercier/
Examiner, Art Unit 1615

/Michael P Woodward/
Supervisory Patent Examiner, Art Unit 1615